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SUPREME COURT OF THE UNITED STATES

1994 TERM

CLARENCE YODER AND LEONA YODER

V.

ELKHART COUNTY AUDITOR and ELKHART COUNTY TREASURER

PETITION FOR WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS

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QUESTIONS PRESENTED

Whether the Appellee-Defendant, Elkhart County Auditor (Auditor), violated due process by selling Appellants' home without giving them actual notice of a tax sale, or notice reasonably calculated to inform them of the tax sale.

What are the minimum constitutional requirements that the Auditor must use to locate a home owner, and send him notice, when certified notice of a tax sale to the homeowner comes back unclaimed, and the homeowner's new address is reasonably ascertainable.

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JURISDICTION AND OPINIONS BELOW

Appellants, Clarence Yoder and Leona Yoder (homeowners), appeal the decision of the Indiana Court of Appeals dated April 7, 1994. The decision by the Indiana Court of Appeals is reported at 632 N.E.2d 369. The homeowners filed a Petition To Transfer to the Indiana Supreme Court on April 25, 1994. The Petition To Transfer was denied on July 19, 1994.

This appeal is being docketed in this Court within ninety (90) days of the denial of transfer by the Indiana Supreme Court. The jurisdiction of this court is invoked under 28 USC §1257, 28 USC §2101(c); and 28 USC §2104.

UNITED STATES CONSTITUTION

This case involves the application of due process under the Fourteenth Amendment of the United States

Constitution which provides that:

> . . . . . .No state shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPLICABLE STATE STATUTES

The Indiana statutes applicable to this case are found in the Indiana Tax Sale Statutes, I.C. §6-1.1-24-1 et seq. and I.C. §6-1.1-25-1 et seq. The most relevant statutes are as follows:

IND. CODE §6-1.1-24-4

> (a) In addition to the notice required by Section 3 of this chapter, the county auditor shall send a notice of the sale by certified mail to the owner or owners of the real property at their last address. The county auditor shall prepare

the notice in the form prescribed by the State Board of Accounts, and he shall mail the notice at least twenty-one (21) days before the date of sale. . . .

IND CODE §6-1.1-25-6

(a) The county auditor shall send a notice by certified mail to the former owner of real property not more than sixty (60) days nor less than thirty (30) days before a tax deed for the property is executed and delivered under this chapter. The county auditor shall prepare the notice on the form prescribed by the State Board of Accounts. . . .

IND. CODE §6-1.1-25-4(d)

(d) A tax deed executed under this section vests in the

> grantee an estate in fee simple absolute, free and clear of all liens and encumbrances except for the lien of the state for taxes and special assignments which accrue subsequent to the sale and which are not removed under subsection (c) of this section. . . .

STATEMENT OF THE CASE

The Elkhart County Auditor (Auditor) sold Clarence and Leona Yoder's (homeowners) home at a tax sale without giving them actual notice. During the relevant time of the tax sale in 1985, the homeowners owned a number of parcels of real estate in Elkhart County. There was a mortgage covering all of the homeowners' property except their house at 2608 S. Main St., Goshen, Indiana. During this time, the homeowners suffered financial

problems and their business, Yoder Feed Supply, was forced to close. The bank also foreclosed on its mortgage. During the foreclosure proceedings, the bank was paying the homeowners' real estate taxes, so the homeowners did not pay them. But, since the mortgage did not cover the house located at 2608 S. Main St. in Goshen, Indiana, the bank did not pay the taxes on 2608 S. Main St., and they became delinquent.

Under Indiana law, the Auditor can sell tax delinquent property. Pursuant to then applicable Indiana law, the Auditor was required to give notice to a taxpayer that there was going to be a sale of the taxpayer's property because of tax delinquencies. This notice was to be sent by certified mail. I.C. 6-1.1-24-4.

On or about June 28, 1985, notice of the tax sale was sent by certified mail to the Yoders at the homeowners' place of

business, Yoder Feed Supply, 524 E. Lincoln Avenue, Goshen, Indiana, the last known address of the homeowners according to the records in the Auditor's Office. As noted, this business was closed at that time. This notice was returned to the Auditor as unclaimed. During this period of time, the homeowners' name and current mailing address was in the Goshen City phone book. The Auditor's office is in Goshen, Indiana.

On August 12, 1985, the Auditor sold the homeowners residence to Richard Adams [1] at a tax sale. Under then applicable Indiana law [2], a home owner had two years following the tax sale to redeem his property or a tax

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[1]This is the same Richard Adams who was the Appellee in Mennonite Board of Missions v. Richard Adams, 462 U.S. 791 (1983).

[2]The tax sale statutes in question, I.C. 6-1.1-24-1 et seq. have been amended. The amendments are not a consideration in this appeal.

deed would be issued to the tax sale purchaser.

On or about July 14, 1987, the Auditor in accordance with then applicable Indiana law

[3] sent a certified letter to the homeowners of their right to redeem their home which was sold at a tax sale. This notice was again sent to the homeowners at 524 E. Lincoln Avenue. This notice came back unclaimed. During this period of time, the homeowners were living at their home, 2608 S. Main St., the very property which was the subject of the tax sale. The homeowners' name, address, and phone number were reasonably ascertainable. It was in the Goshen City phone book. Furthermore, under Indiana law, the Treasurer and Auditor are required to share taxpayer information. The Elkhart County Treasurer had the homeowners'

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[3]See Footnote 2.

current address of 2608 S. Main St. The Treasurer had sent the homeowners a separate tax notice at 2608 S. Main St. before the redemption period had expired, but never sent notice to the homeowners of the tax sale itself..

On August 13, 1987, a tax deed was issued to Richard Adams. After the expiration of the redemption period, Adams went to the Yoders' home at 2608 S. Main St. and informed them he was the new owner. The homeowners then filed a three count complaint to quiet title on November 19, 1987, seeking in Count I to have the tax sale set aside, arguing that the tax sale was invalid because they did not receive actual notice of the sale from the Auditor and the Treasurer. Count II was a claim for adverse possession against Adams because the homeowners were in possession of the home before and after the tax sale. Count III was a complaint against the Auditor and

Treasurer for damages in connection with the unconstitutional sale of the Yoders' home.

The homeowners then settled their case with the tax sale purchaser, Adams, and then filed a motion for summary judgment against the Auditor and Treasurer for failing to provide the homeowners notice of the tax sale.

On January 21, 1991, the trial court denied the homeowners' motion for summary judgment against the Auditor and Treasurer, and granted the Auditor and Treasurer's motion for summary judgment against the homeowners. The trial court upheld the validity of the tax sale.

On April 7, 1994, the Court of Appeals rendered its decision upholding the summary judgment of the trial court. See Yoder v. Elkhart County Auditor and Elkhart County Treasurer, Ind. App., 632 N.E.2d 369 (1994). The Indiana Supreme Court, on July 19, 1994, denied transfer without an opinion.

CONSTITUTIONAL ISSUE OF DUE PROCESS FIRST RAISED

Before the trial court, the homeowners first argued the tax sale was invalid based upon this court's precedent in Mennonite and Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988). The Indiana Court of Appeals in this case found the tax sale was valid. It determined there was no constitutional requirement under Mennonite for the Auditor or Treasurer to look for a change of address for a home owner outside of the official tax rolls contained in the Auditor's office. The Court of Appeals relied upon an Indiana case, Elizondo v. Read, Ind., 553 N.E.2d 849 (1990), which had interpreted this Court's decision in Mennonite. The Indiana Supreme Court in Elizondo determined that due process under Mennonite did not require the Auditor to look in the phone book for the proper address for a home owner when a

certified notice came back unclaimed. All that was required, according to the Indiana Supreme Court's interpretation of this Court's decision in Mennonite, was for the Auditor to send notice at the last known address, based upon records maintained in the Auditor's office. The Indiana Supreme Court in Elizondo held that the taxpayer has the burden of notifying the government of a change of address, relieving the Auditor of any constitutional requirement to investigate a taxpayer's change of address outside of its own official records.

This case presents the question of what are the minimum constitutional requirements to locate a taxpayer, who has moved, to give him notice of a tax sale. In Mennonite, this Court held that "notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property

interests of any party, . . .if [his name], and address are reasonably ascertainable." Id. at 800. In this case, the homeowners' name and address were easily ascertainable. It was in the local phone book. Furthermore, the homeowners were living at the very property which was sold by the Auditor. Under these circumstances, the homeowners believe a logical extension of this Court's decision in Mennonite would have required that the Auditor utilize reasonable business practices to find the current address of a taxpayer, when a certified letter comes back unclaimed. At a minimum, the homeowners contend due process would require the Auditor to conduct a reasonable investigation, such as looking in a local phone book or going to the property in question to see who was in possession of it, in order to find and give notice to a homeowner. Utilizing either means in this case would have provided the

homeowners' name and address. Cf. Robinson v. Hanrahan, 409 U.S. 38 (1972) and Covey v. Town of Somers, 351 U.S. 141 (1956).

Furthermore, the question presented by this appeal is substantial and is likely to recur. On the one hand, every state has a statutory scheme to collect taxes, and to sell real property when taxes are delinquent. On the other hand, this case involves the fundamental right to own real property. The notice issue presented in this appeal has been addressed by numerous states. Those cases are in conflict with this case. The prevailing view from other states is in general that due process, as set out by this court in Mennonite, would require the government to conduct a reasonable investigation to ascertain the name and address of a missing taxpayer, and such reasonable investigation would include looking in a phone book or going to the property in question. Compare the decisions

from New York[4],

Mississippi[5],

West Virginia[6],

Idaho[7],

North Dakota[8],

Massachusetts[9],

Pennsylvania[10],

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[4]McGann v. Scaduto, 71 N.Y.2d 164, 524 N.Y.S.2d 398, 519 N.E.2d 309 (1987)

[5]DeWeese Nelson Realty v. Equity Services, Miss., 502 S.2d 310 (1987)

[6]Lilly v. Duke, W.Va., 376 S.E.2d 123 (1988)

[7]Giacobbi v. Hall, Ida., 707 P.2d 404 (1985)

[8]Miles Homes Division of Insilco Corp. v. City of Westhope, N.D., 458 N.W.2d 321 (1990)

[9]City of Boston v. James, 530 N.E.2d 1254, 1256 (1988)

[10]Geier v. Tax Claim bureau of Schuylkill County, et al., Pa. App., 570 A.2d 134 (1990); Tracy v. County of Chester, Tax Claim, Pa., 489 A.2d 1334, 1338 (1985); In Re Upset Sale, 505 Pa. 327, 479 A.2d 940 (1984)

New Jersey[11],

New Mexico[12],

Oregon[13],

Michigan[14],

and Oklahoma[15],

which have held that the government must conduct a reasonable investigation to find a new taxpayer address, to this case from Indiana, which held the

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[11]Sourlis v. Borough of Red Bank, N.J. App., 532 A.2d 740, 742 (1987)

[12]Klineline v. H.R. Blackhurst, et. al., 106 N.M. 732, 749 P.2d 1111 (1988); Hoffman v. State, 117 N.M. 263, 871 P.2d 27 (1994)

[13]Davenport v. Gruber, 111 Or. App. 280, 826 P.2d 59 (1992); Seattle First National Bank v. Umatilla County, 77 Or. App. 283, 713 P.2d 33 (1986)

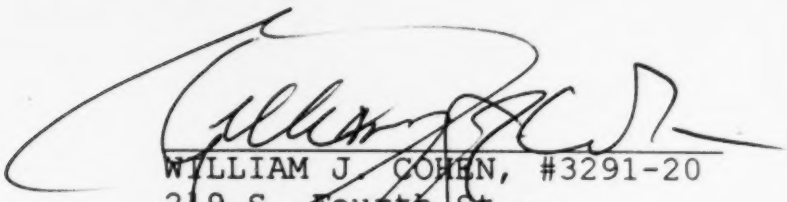
[14]City of Detroit v. Blake, 144 Mich. App. 432, 376 N.W.2d 114 (1984)

[15]Wells Fargo Credit Corp. v. Ziegler, 780 P.2d 703 (Okla. 1989)

Auditor did not need to look outside of its own records to find a missing taxpayer.

This case presents this Court with the opportunity to resolve the conflict among the states and to clarify the minimum requirements necessary to satisfy due process in a tax sale. Before the Indiana Court of Appeals and the Indiana Supreme Court, the homeowners urged the Indiana Courts to follow the decisions from the other jurisdictions cited herein, but the Indiana Courts refused to consider those decisions. Indiana's decision contravenes ruling precedent by this Court in Mennonite. If the homeowners lived in any of the states whose decisions are cited herein, other than Indiana, the decision would have been in favor of the homeowners. For these reasons, this court should grant a writ of certiorari to the Indiana Court of Appeals and reverse its decision.

Respectfully submitted,



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APPENDIX

IN THE ELKHART SUPERIOR COURT #2

CLARENCE YODER and LEONA YODER vs. ELKHART COUNTY AUDITOR and ELKHART COUNTY TREASURER

CAUSE NO. 20D02-8711-CP-00803

BE IT FURTHER REMEMBERED, that afterward, to-wit: on the 21st day of January, 1991, at the Court Room in the City of Elkhart, before the Honorable Stephen E. Platt, regular Judge of said Court, the following proceedings were had in the above-entitled cause, to-wit:

Defendants Elkhart County Auditor and Treasurer Motion For Summary Judgment now granted. Defendant's Motion For Fees and Expenses now denied. Notice ordered.

Clarence YODER and Leona Yoder,
Appellants-Plaintiffs,

v.

ELKHART COUNTY AUDITOR and
Elkhart County Treasurer,
Appellees-Defendants.

No. 20A05-9105-CV-00150.

Court of Appeals of Indiana,
Fifth District.

April 7, 1994.

William J. Cohen, Elkhart, for appellants.

R. Gordon Lord, Craig M. Buche, Goshen, for appellees.

SHARPNACK, Chief Justice.

Clarence and Leona Yoder appeal a summary judgment entered for the Elkhart County Auditor (Auditor) and Elkhart County Treasurer (Treasurer). The Yoders present two issues for appeal, which we restate as one: whether the trial court erred in entering summary judgment. We affirm.

The Yoders owned a certain tract of real estate in Elkhart County, Indiana. As a result of tax delinquencies spanning more than two years, this real estate was scheduled to be sold at a tax sale on August 12, 1985. On or about June 28, 1985, notice of the tax sale was sent by certified mail to the Yoders at 524 E. Lincoln Avenue, Goshen, Indiana, the last known address of the Yoders associated with the subject real estate according to the records in the Auditor's office. This notice was returned to the Auditor as unclaimed. Barbara Wray, an employee in the Auditor's Office, searched for another address in the R.K. Polk Goshen City Directory and found a listing for the Yoder Feed Company at the 524 E. Lincoln Avenue address. Wray sent the notice of tax sale a second time on or about July 16, 1985, to the Yoders in care of the Yoder Feed Service at 524 E. Lincoln

Avenue, Goshen, Indiana, but the notice again came back unclaimed. The records reveals that the Yoders had owned and operated the Yoder Feed Service at the 524 E. Lincoln Avenue address until October, 1985, when Mr. Yoder closed the business and stopped receiving mail at that location. The Yoders did not update their mailing address with the Auditor or the post office. On August 12, 1985, the Yoders' real estate was sold to Richard Adams at a tax sale.

Approximately two years later, on or about July 14, 1987, the Auditor sent a "notice of tax sale redemption or issuance of tax deed" to the Yoders at the 524 E. Lincoln Avenue address, which also was returned unclaimed and marked with the notation "Moved Left No Address." The real estate was not redeemed during the statutory redemption period and as a result, on august 13, 1987, a tax deed was issued to Adams.

The Yoders provided the Auditor with a new address once they became aware that the tax deed was issued to Adams.

The Yoders filed a three count action to quiet title to the real estate on November 19, 1987. The Yoders sought to have the tax sale and deed set aside, arguing that the sale was invalid because they did not receive proper notice of the tax sale from the Auditor and Treasurer. Count I of their complaint was a claim seeking to quiet title, Count II was a claim for adverse possession, and Count III was a claim for damages directed at the Auditor and the Treasurer.

On July 22, 1988, the Yoders moved for summary judgment on Count I of their complaint, asking the trial court to declare the tax sale invalid. Adams also moved for summary judgment arguing that the tax sale was valid. On October 31, 1988, the court

issued its decision finding that the tax sale was valid and entered summary judgment in favor of Adams. The Yoders initiated an appeal, but then settled their differences with Adams by entering into a contract to purchase real estate and a covenant not to pursue litigation. The Yoders filed a motion to dismiss the pending appeal, which this court granted on October 2, 1989. The Yoders then sought to proceed with their claim for damages under Count III against the Auditor and Treasurer.

On September 24, 1990, the Yoders filed a motion for summary judgment on the issue of liability against the Auditor and Treasurer for failing to provide adequate notice of the tax sale. The Auditor and Treasurer filed legal memoranda in opposition to the Yoders' motion for summary judgment asserting that the issue of notice adequacy had already been concluded and that

the Yoders could not relitigate it. The Auditor and Treasurer in turn sought summary judgment against the Yoders based on res judicata and collateral estoppel.

On January 21, 1991, the trial court denied the Yoders' motion for summary judgment against the Auditor and Treasurer and granted the Auditor and Treasurer's motion for summary judgment against the Yoders.[1] The Yoders initiated this appeal and thereafter sought transfer of their appeal to the Indiana Supreme Court so that their case could be decided together with other pending cases involving similar due process issues. On December 30, 1991, the

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[1] We do not determine the issue of whether res judicata and collateral estoppel prevented the Yoders from appealing the trial court's entry of summary judgment, or whether the Auditor and Treasurer are amenable to a suit for damages. Instead, our finding that the notice given to the Yoders of the tax sale and tax redemption met constitutional standards is dispositive of the present appeal.

Indiana Supreme Court denied the Yoders' petition to transfer and this court granted a stay pending the supreme court's decision in *Elizondo.* Following the supreme court's decision, on August 3, 1993, this court resumed consideration of the Yoders' appeal after allowing amendments of briefs.

When we review the trial court's entry of summary judgment, we are bound by the same standard as the trial court: summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Ayres v. Indian Heights Volunteer Fire Dept., Inc.* (1986), Ind., 493 N.E.2d 1229, 1234. The appellant has the burden of proving that the trial court erred in determining that there are no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Rosi v. Business Furniture Corp.*

(1993), Ind., 615 N.E.2d 431, 434. We do not weigh the evidence, but we will consider the facts in the light most favorable to the nonmoving party. *Collins v. Covenant Mutual Insurance Co.* (1992), Ind. App., 604 N.E.2d 1190, 1194. This court may affirm the trial court's ruling on a motion for summary judgment even if such affirmation is on grounds different than those reflected in the trial court's order. *Douglass v. Irvine* (1990), Ind. 549 N.E.2d 368, 371; *City of Tipton v. Baxter* (1992), Ind. App., 593 N.E.2d 1280, 1282.[2]

Indiana Code §6-1.1-24-4 prescribes how notice is to be provided to the owners of property subject to a tax sale. It provides:

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This case was decided prior to the amendment of T.R. 56, effective January 1, 1991, which requires the parties to designate to the court all evidentiary matter on which the parties rely in either promoting or opposing the motion.

(a) Not less than twenty-one (21) days before the date of application for judgment and order for sale of real property eligible for sale, *the county auditor shall send a notice of the sale by certified mail to the owner or owners of the real property at their last known address.* . . . Failure by an owner to receive or accept the notice required by this section does not affect the validity of the judgment and order.

I.C. § 6-1.1-24-4 (emphasis added.)

It is well settled that before an action affecting a party's interest in life liberty, or property protected by the Due Process Clause of the Fourteenth Amendment proceeds, the State, at a minimum, must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the

action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865. Such notice must reasonably convey the required information to the affected party, must afford a reasonable time for that party to respond, and is constitutionally adequate when the practicalities and peculiarities of the case are reasonably met. 339 U.S. at 314-15, 70 S.Ct. at 657. The reasonableness of the notice given depends on the means chosen by the State to provide notice. *Id.* Whether notice is reasonable depends on the balance struck between the State interest involved and the constitutionally protected individual interest involved. *Id.* It is the State's responsibility to strike the proper balance between these conflicting interests. *Id.*

In their original brief, the Yoders

argued that the trial court's granting of the Auditor and Treasurer's motion for summary judgment was incorrect based on *Elizondo v. Read* (1990), Ind. App., 553 N.E.2d 849, in which this court held that "*Mennonite Board of Missions v. Adams* [(1983), 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180] places an affirmative obligation upon the State to --minimally-- check the public records to ascertain the correct address of any party whose property interests are to be adversely affected by tax sale proceeds." *Elizondo*, 553 N.E.2d at 851.

In their amended brief, the Yoders argue that the Indiana Supreme Court's holding in *Elizondo v. Read* (1992), Ind., 588 N.E.2d 501, which vacated this court's decision, noted *supra*, misapplies the United States Supreme Court's holding in *Mennonite* and therefore, we should follow the

Mennonite decision. We disagree with the Yoders' contention that these two cases are in conflict.

To better understand our decision, it is necessary to review the Indiana Supreme Court's *Elizondo* decision. The Elizondos purchased a recreational lot in Plymouth, Indiana, in 1979. *Elizondo*, 588 N.E.2d at 502. From 1981 to 1984, the real estate tax statements for the property were addressed to the Elizondos' residence at 213 North Second Street, Plymouth, Indiana. *Id.* During this period, the Elizondos moved twice. *Id.* From 1983 to 1984, they resided at 310 South Plum Street, Plymouth, Indiana. *Id.* In 1984, they purchased a new residence and relocated again, moving to 1631 West Harrison, Plymouth, Indiana. *Id.*

The Elizondos fell into arrears on property taxes on the recreational lot. *Id.* All notices sent to the Elizondos by the

Marshall County Auditor were sent to the 213 North Second Street address. *Id.* Tax statements sent to this address were returned unclaimed. *Id.* The auditor sent a courtesy letter to the Elizondos, followed by a certified mailing of the formal notice of tax sale, dated July 23, 1984. *Id.* This notice was returned unclaimed. *Id.* Notice of the tax sale was placed in several newspapers and the Reads purchased the property at the tax sale. *Id.*

Two years later, the auditor sent the Elizondos a "notice of tax sale redemption or issuance of tax deed" by certified mail to the 213 North Second Street address. *Id.* The notice was returned unclaimed because the post office had no forwarding address and the Elizondos failed to provide any change of address notice to the auditor. *Id.* A tax deed was issued to the Reads. *Id.* In 1984, when the tax sale notices were

ailed, the auditor had available personal property records indicating that the Elizondos resided at 310 South Plum Street. *Id.* In 1986, at the time of the forwarding of the notice of redemption, the auditor maintained a real estate tax file and an alphabetized real estate card file containing listings for the Elizondos former and current addresses. *Id.* Also, the Elizondos were listed in the phone directory at the proper address during the time period in question. *Id.*

Our supreme court held that notice to the Elizondos at their 213 North Second Street address was sufficient, writing

> "[a]ll [that] is required is that the auditor send notice to the owner's last known address, that is, the last address of the owner of the specific property in question of which the auditor has knowledge from records

maintained in its office."

Id. at 504-05.

The supreme court further stated:

> "It is reasonable to require the auditor to search the records of his own office for other possible addresses upon the receipt of an undelivered notice. It is not, however, reasonable to require the auditor to speculate as to whether these possible alternatives are addressed for the property owner who owes taxes on the property in question or another taxpayer with the same name."

Id. at 505.

The United States Supreme Court in *Mennonite, supra,* held that when a "mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice

mailed to the mortgagee's last known available address, or by personal service" to satisfy the mandate of *Mullane*. 462 U.S. at 798, 103 S.Ct. at 2711. The Supreme Court further stated:

> "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable."

Id. at 800, 103 S.Ct. at 2712.

Contrary to the Yoders' argument, we do not find a conflict existing between the holdings in *Elizondo* and *Mennonite*. Both decisions seek to and do satisfy the mandate of *Mullane*. *Mennonite* provides that notice by mail or other means

as certain to ensure actual notice is required where the name and address of any party with a liberty or property interest are reasonably ascertainable. 462 U.S.at 798, 103 S.Ct. at 2711. Notice sent "to the owner's last known address. . .of which the auditor has knowledge from its records maintained in its office" satisfied the *Mennonite* notice requirement. 588 N.E.2d at 504-05. Because the Indiana Supreme Court in *Elizondo* addressed similar issues regarding the property owner that are involved in the instant case, we rely on our supreme court's *Elizondo* decision.

The Yoders argue that if *Elizondo* is controlling, then reversal is warranted because the Auditor should have personally served them with notice since the Yoders' current residential address and the address for the tax sale property were one and the same. Whether the property and address were

one and the same, however, is of no consequence. *Elizondo* states that notice is sufficient when the auditor sends "notice to the owner's last known address, that is, the address of the owner of the specific property in question of which the auditor has knowledge from records maintained in its office." 588 N.E.2d at 504. In the instant case, the auditor had the Yoders' 524 E. Lincoln Avenue address on file in its office and it mailed notice to that address. The Yoders did not provide the Auditor with their new address and did not submit a change of address notice to the post office or otherwise arrange for the forwarding of their mail until after the tax deed was issued. The notice in this case met the *Elizondo* standard.

The Yoders further argue that reversal is warranted because a member of the Treasurer's staff helped the Auditor's

staff search for the Yoders' current address, which was on file in the Treasurer's office when notice of tax sale redemption was given to the Yoders. Therefore, the Yoders contend that the Treasurer's knowledge of their current address should be imputed to the Auditor. We disagree. An auditor is not "required to resort to the most recent telephone directories to ascertain a different address, nor should the auditor be required to search the records of other offices such as the recorder or the court clerk" to find the property owner's current address. *Id.* The fact that Barbara Wray chose to search for a more current address for the Yoders with the assistance of the Treasurer's staff is inconsequential.

We find that the notice given to the Yoders of all tax proceedings satisfied the notice requirements provided in *Elizondo*.

We therefore affirm the judgment of the trial court.

AFFIRMED.

RILEY, J., concurs.

RUCKER, J., concurs in result.

IN THE INDIANA SUPREME COURT

Clarence YODER and Leona Yoder,
Appellants-Plaintiffs,

v.

ELKHART COUNTY AUDITOR, and
Elkhart County Treasurer,
Appellees-Defendants.

No. 20A05-9105-CV-00150

Court of Appeals of Indiana,
Fifth District

You are hereby notified that on this day 7/19/94 APPELLANTS' PETITION TO TRANSFER TO THE INDIANA SUPREME COURT IS HEREBY DENIED.

ROGER O. DEBRULER, ACTING CHIEF JUSTICE

ALL JUSTICES CONCUR.